

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 991 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

PRIYAKANT THAKORELAL MUNSHA

Versus

JANJYOT INVESTMENT PVT.LTD

Appearance:

MR AC GANDHI for appellants
MR AV TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE R.P.DHOLAKIA
Date of decision: 15/06/1999

ORAL JUDGEMENT (Per: J.M.Panchal, J.)

Admitted. Mr.A.V.Trivedi, learned counsel waives service of notice on behalf of the respondent. With the consent of learned advocates, appeal is taken up for

final disposal today.

2. By means of filing this appeal under sec.96 of the Code of Civil Procedure, 1908, the appellants, who are original defendants, have challenged the validity of judgment dated October 30, 1998 rendered by the learned Judge, Court No.13, City Civil Court, Ahmedabad in Civil Suit No.4618 of 1996 by which suit filed by the respondent for specific performance of agreement to sell dated January 13, 1987 is decreed.

3. The appellants are the owners of property bearing sub-plot Nos.67, 68, 71 and 72 of Final Plot Nos.757 and 758 of Ellisbridge Town Planning Scheme No.3. The property consists of land admeasuring 1709 sq. mtrs. with residential bungalow, servant quarter and compound wall. The appellants executed an agreement to sell the said property on January 13, 1987 in favour of the respondent. The consideration agreed to be paid was mentioned to be Rs.10.00 lakhs. It was also stipulated therein that necessary permission under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter to as 'the Act') as well as Income Tax Clearance certificates would be obtained by the appellants. In the agreement to sell it was mentioned that the Sale Deed was to be executed on June 30, 1987 or within two months from the date of obtaining necessary permission under the provisions of the Act. According to the respondent, it had paid a sum of Rs.1.00 lakh to the appellants as earnest money and was always ready and willing to perform its part of the contract, but the appellants were not ready to perform their part of the contract and had taken no steps for obtaining permission under the provisions of the Act. It may be mentioned that the time limit stipulated in the agreement to sell for execution of sale deed was extended from time to time by the appellants. As the appellants failed to execute Sale Deed in favour of the respondent, the respondent instituted Civil Suit No.4618 of 1996 in the City Civil Court at Ahmedabad and prayed to enforce the said agreement specifically.

4. The appellants contested the suit by filing the written statement at exh.21. In the written statement, they admitted the execution of the Banakhat as well as receipt of Rs.1.00 lakh as earnest money, but contended that they had taken necessary steps as contemplated by the agreement to sell and as they were ready and willing to perform their part of the contract, the suit should be dismissed.

5. Upon rival assertions of the parties, necessary issues for determination were raised by the learned Judge at exh.26. In support of its claim, the respondent examined Mr.Sailesh Ratilal Shah at exh.38 whereas the appellants examined Mr.Bipinbhai Motilal Solanki at exh.113 in support of their claim advanced in the written statement. The parties also produced documentary evidence in support of their respective cases. On appreciation of evidence led by the parties, the learned Judge held that execution of agreement to sell dated January 13, 1987 by the appellants in favour of the respondent is proved. The learned Judge deduced that the appellants had deliberately failed and neglected to sell the property to the respondent. The learned Judge further concluded that the respondent was ready and willing to perform its part of the contract and as the appellants had failed and neglected to obtain necessary permission to sell the suit property as well as title clearance certificate and income tax certificate, the suit was required to be decreed. In view of the above referred to conclusions, the learned Judge decreed the suit by the judgment and order dated October 30, 1998 giving rise to the present appeal.

6. Mr.A.C.Gandhi, learned counsel for the appellants submitted that the appellants could not obtain necessary permission under the provisions of the Act as well as the Income Tax Clearance certificate for the reasons which were beyond their control and, therefore, decree for specific performance should not have been passed by the trial Court. It was claimed that the appellants had given an undertaking in another legal proceeding to the effect that they would not sell or transfer the suit property to any one pending the said litigation and, therefore, the impugned decree deserves to be set aside. What was stressed on behalf of the appellants was that in view of the provisions of the Act, decree for specific performance should not have been passed against the appellants and, therefore, the appeal should be admitted and allowed.

7. Mr.A.V.Trivedi, learned counsel for the respondent pleaded that the appellants had failed and neglected to act as per the terms of agreement to sell and, therefore, the trial Court was justified in passing decree of specific performance in favour of the respondent. It was contended that the respondent had not only paid huge amount as earnest money but was ready and willing to perform its part of the contract and, therefore, the well founded decree of specific performance passed in favour of the respondent should not

be disturbed by the Court in the present appeal. What was claimed was that the appellants had not taken necessary steps to obtain the requisite permission as contemplated by agreement to sell and, therefore, the appeal should be dismissed.

8. We have heard the learned counsel for the parties and we have also taken into consideration the documents produced before us for our perusal. The fact that the appellants had executed an agreement to sell on January 13, 1987 in favour of the respondent is not in dispute. It is not in dispute that the respondent had paid a sum of Rs.1.00 lakh by way of earnest money to the appellants and the appellants had received the same. It is relevant to notice that the agreement to sell executed by the appellants was registered and this fact has been referred to by witness Saileshbhai Ratilal Shah who was examined on behalf of the respondent. The correspondences exchanged between the parties produced at exhs.31 to 37 prove that suit Banakhat was executed by the appellants and the time fixed for execution of the sale deed was extended from time to time. The record of the case does not indicate in any manner that any proceedings were pending before the High Court regarding excess land under the provisions of the ULC Act, but all throughout the appellants informed the respondent that the proceedings were pending before the High Court and, therefore, they were not able to obtain requisite permission under the said Act. This would indicate that on false pretext, the appellants had not made any attempt to obtain permission under the said Act. As far as obtaining of Income Tax Clearance is concerned, it is quite clear that the appellants had not taken any steps to obtain the same. It was asserted by Mr.Solanki, who was examined on behalf of the appellants that permission under the Income Tax Act was required to be obtained only when the final sale deed was to be executed and, therefore, no such permission was obtained. However, if one reads agreement to sell, it becomes evident that such permission was to be obtained before execution of the sale deed and not after the execution of the sale deed. Under the circumstances, the finding recorded by the learned Judge to the effect that the defendants had failed and neglected to obtain necessary permission from the competent authorities is eminently just and deserves to be upheld. It may be mentioned that the suit property was not an open piece of land but was a constructed property consisting of residential bungalow, servant quarter and compound wall and the construction was on the land admeasuring 1709 sq.mtrs. Under the circumstances, the stand taken by the appellants that some proceedings

were pending before the High Court under the provisions of the Act and, therefore, it was not possible for them to obtain permission can hardly be appreciated and approved. Mr.Solanki, who was examined on behalf of the appellants has clearly admitted in his deposition that the respondent was ready to buy the property in its present condition. Therefore, the finding recorded by the learned Judge to the effect that the respondent was ready and willing to perform its part of the contract is well founded and is hereby upheld. The contention that the decree could not have been passed in view of the provisions of the ULC Act and, therefore, the appeal should be entertained is devoid of merits. The Full Bench in the case of Shah Jitendra Nanalal Vs. Patel Lallubhai Ishwarbhai and others, 1985 GLH 53 has ruled that Court can pass conditional decree for specific performance subject to exemption being obtained under the provisions of the Act. Therefore, we do not find that any error is committed by the learned Judge in passing conditional decree in favour of the respondent. Similarly, the contention that the appellants had given an undertaking in another proceedings to the effect that they would not sell or transfer the said property to any one pending the said litigation and, therefore, agreement to sell dated January 13, 1987 executed in favour of the respondent should not have been enforced specifically has no substance. It may be stated that the undertaking only binds the party giving it and it does not affect the powers of the Court to pass a decree for specific performance of an agreement to sell. Moreover, the record does not indicate that at any point of time, the appellants had disclosed to the respondent that they had given any such undertaking and were therefore unable to execute the sale deed as contemplated by agreement to sell.

9. Having regard to the totality of the facts and circumstances of the case, we are of the opinion that a just decree has been passed by the trial Court and no case is made out by the appellants to interfere with the same in the present appeal.

10. However, as the operative part of the judgment is not exhaustive, the parties have presented a joint purshis signed by the learned counsel at the time of hearing of the appeal. It reads as under:

" The parties abovenamed beg to submit the following purshis by consent.

The decree passed by the City Civil Court
at Ahmedabad in Civil Suit No.4618 of 1996 dated
28th October, 1998 be modified as under:-

The decree for specific performance of
the contract for sale dated 13-1-1987 for the
suit property is passed. The plaintiff-purchaser
shall deposit the balance purchase price of
Rs.9,00,000/- (Nine lacs only) in the trial Court
on or before 31st August, 1999. On such deposit
being made the defendants shall execute the Sale
Deed for the suit property in favour of the
plaintiff in terms of the contract for sale
referred to above.

Sd/-

Ahmedabad Advocate for the appellant

Sd/-

Date:4.5.1999 Advocate for the opponent"

11. In view of the joint purshis passed by the
parties and in view of this specific consent of the
respondent, the decree passed by the City Civil Court at
Ahmedabad in Civil Suit No.4618 of 1996 is modified as
under:

The decree for specific performance of the
agreement to sell dated January 13, 1987 executed by the
appellants in favour of the respondent for the suit
property is passed. The plaintiff-purchaser shall
deposit the balance purchase price of
Rs.9,00,000/-(Rupees nine lakhs only) in the trial Court
on or before 31st August, 1999. On such deposit being
made, the defendants shall execute the sale deed for the
suit property in favour of the plaintiff in terms of the
contract to sale within six months of obtaining necessary
permission if required as contemplated by the agreement
to sell failing which it shall be open to the respondent
to get the sale deed executed through the Commissioner to
be appointed by the Court. On execution of the sale
deed, the appellants shall be entitled to withdraw the
amount of Rs.9,00,000/- (Rupees nine lakhs only) which
may be deposited by the respondent. The original
plaintiff shall bear the expenses of execution of Sale
Deed, remuneration of Court Commissioner and other
incidental expenses.

12. Subject to modifications made in the operative
part of the impugned judgment, the appeal fails and is
dismissed with no order as to costs.

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